IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1484 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SUNILBHAI SHANTILAL PATEL - Applicant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
HL PATEL ADVOCATES for Applicant(s) : 1,
MR MR MENGDEY APP for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 08/10/2007

ORAL JUDGMENT

1. Heard Learned advocate Shri Asim Pandya for H.L. Patel,

advocate and learned A.P.P. Mr. Dipen Desai for the State.

2. The prayer made in this petition is for quashing the order dated 20.2.2007 passed by the learned Additional Sessions Judge, Kheda at Nadiad below Exhibit 159 application in Sessions Case No.238 of 2003.

3. The petitioner is facing criminal prosecution in Sessions Case No.238 of 2003 alleging offences punishable under Sections 143, 147, 148, 149, 307, 435, 436, 337 of Indian Penal Code. During the pendency of the criminal trial, the petitioner desired to obtain a passport and according to him, his immigration file has been processed. If the passport is not given soon he will miss an opportunity to receive Visa. He had therefore, applied before the learned Sessions Judge by an application dated 6.1.2007, and prayed that he may be permitted to obtain a passport on suitable terms and conditions. This application, however, came to be rejected by the learned Judge by impugned order dated 20.2.2007.

4. The petitioner has in present petition made out a case as per the provisions contained in Passport Act, particularly Section 6 thereof. Ordinarily person in respect of whom proceedings for offence alleged to have been committed by him are pending before the Criminal Court is not entitled to receive a passport. However, Section 22 of the Passport Act, permits the Central Government to

issue Notification to grant exemption from such requirement on certain conditions. My attention has been drawn to the Notification dated 25.8.1993, wherein in exercise of powers under Section 22 of the Passport Act, limitation contained in Section 6 (2) (f) have been exempted upon fulfillment of certain conditions, which are reproduced herein below.

(a) the passport to be issued to every such citizen shall be issued;

(i) for the period specified in order of the Court referred to above, if the Court specified a period for which the passport has to be issued; or

(ii) if no period either for the issue of the passport or for the travel abroad is specified in such order, the passport shall be issued for a period of one year;

(iii) if such order gives permission to travel abroad for a period less than one year, but does not specify the period of validity of the passport, the passport shall be issued for one year; or

(iv) if such order gives permission to travel abroad for a period exceeding one year, and does not specify the validity of the passport, then the passport shall be issued for the period of travel abroad specified in the order.

(b) any passport issued in terms of (a) (ii) and (a) (iii) above can be further renewed for one year at time, provided the applicant has not traveled abroad for the period sanctioned by the Court; and

provided further than, in the meantime, the order of the Court is not cancelled or modified;

(c) any passport issued in terms of (a)(i) above can be further renewed only on the basis of a fresh, order specifying a further period of validity of the passport or specifying a period for travel abroad;

(d) the said citizen shall given an undertaking in writing to the passport authority that he shall if required by the Court concerned, appeared before it at any time during the continuance in force of the passport so issued.

6. Learned A.P.P. Mr. Desai is not in a position to controvert the averments of the petitioner that the above Notification is currently in operation.

7. From the above, it can be seen that it is open for the Court before which criminal proceedings are pending to relax the conditions contained in Clause (f) of Sub-Section (2) of Section 6 of the Passport Act, upon suitable conditions.

8. The petitioner has stated that in case he receives a visa call and if he does not produce the passport timely, he may miss his turn. Therefore, even if by that time, the petitioner is required to travel abroad and he is acquitted in the criminal case, he will be able to travel.

9. Under the circumstances, by quashing the impugned order dated 20.2.2007, it is directed that the petitioner's application for passport shall be processed subject to following conditions :

1. That the application of the petitioner shall be considered by the Passport Authority ignoring the pending criminal proceedings namely Sessions Case No.238 of 2003 and decide the application in accordance with law.

2. Above direction is not made to command that the petitioner shall be granted passport regardless of other impairment if any, nor any requirement of the law is to be ignored.

3. Ultimately, if the Passport Authority decides to issue such passport to the petitioner, same shall be valid for a period of one year.

4. That the passport so issued, shall not be handed over to the petitioner, but be deposited directly before the learned Sessions Judge, Kheda at Nadiad.

5. In any case, the petitioner shall not leave India without the prior permission of the said Court, till final disposal of the trial.

With these directions, the petition is disposed of. Rule is made absolute accordingly.

(AKIL KURESHI, J.)

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